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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,368	12/31/2003	Paul T. Van Gompel	19,446	1176
23556	7590	04/23/2007	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			HILL, LAURA C	
		ART UNIT	PAPER NUMBER	
		3761		
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE		DELIVERY MODE	
3 MONTHS	04/23/2007		PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT      PAPER

20070319

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner for Patents

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/749,368	VAN GOMPEL ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Laura C. Hill	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 10 Jan 2007.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-64 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-64 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2/28/07.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date.       .  
5)  Notice of Informal Patent Application  
6)  Other:       .

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 January 2007 has been entered.

### ***Response to Arguments***

Applicant's arguments filed 10 January 2007 have been fully considered but they are not persuasive.

In response to Applicant's arguments that Mishima doesn't disclose a fastener adapted to engage into an elastic inner layer (see Remarks pages 16-17), Examiner maintains that Mishima discloses loops 12 is a fastener which engages hooks 11 that are part of elastic inner layer 4 (paragraph 0033 and figure 2).

In response to Applicant's arguments that Scripps doesn't disclose a fastener adapted to engage into an elastic inner layer (see Remarks page 17), it is noted that Scripps is not relied upon for this teaching but rather is relied upon to teach type of bonding (page 3 of the Office action dated 12 October 2006). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly

suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to Applicant's arguments that Freeland doesn't disclose a fastener adapted to engage into an elastic inner layer (see Remarks pages 17-18), it is noted that Freeland is not relied upon for this teaching but rather is relied upon to teach relative length and width dimensions of inner and outer layer as required by the fore mentioned claims (pages 4-5 of the Office action dated 12 October 2006). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to Applicant's arguments that Wilson doesn't disclose a fastener adapted to engage into an elastic inner layer (see Remarks page 18), it is noted that Wilson is not relied upon for this teaching but rather is relied upon to teach multiple layers (pages 5-6 of the Office action dated 12 October 2006). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to Applicant's arguments that Clear doesn't disclose a fastener adapted to engage into an elastic inner layer (see Remarks page 19), it is noted that Clear is not relied upon for this teaching but rather is relied upon to teach pleats (page 7 of the Office action dated 12 October 2006). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-3, 5, 8-10, 13-14, 17, 19-24, 26, 29-31, 34-35, 38-47, 50-52, 55-56, and 59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mishima et al. (US 2002/0072726) in view of Scripps (US 4,869,724). Regarding claims 1-2, 5, 8-10, 13-14, 17, 19-23, 26, 29-31, 34-35, 38-42, 44, 46, 50-52, 55-56, 59-63 Mishima discloses disposable diaper 1A having skin-facing side 2 and non-skin-facing side/outer barrier layer 3 and comprising an absorbent panel 6 disposed between elastic liquid pervious topsheet/inner layer 4 and impervious base sheet/outer layer 5 that are bonded to each other (paragraphs 0024-0025, 0054, figure 3), elastic inner layer having opening 8 (paragraph 0029) wherein the outer surface of outer layer 5 in front region 20 has a fastener 12 located laterally outward of each longitudinal side edge and adapted to

engage into the back region 22 inner liner, the back region 22 inner layer includes fastener 11 located laterally inward of each longitudinal side edge and adapted to engage into the outer surface of the front region 20 outer layer 5 (paragraph 0033, figures 1-2) with front fastener 12 is less in length than the front panel length (figures 1-2). Mishima does the outer layer is bonded to the elastic inner layer via perimeter adhesive bonds. **Scripps** discloses disposable diaper 20 with absorbent core 28 disposed between pervious topsheet 26 and impervious backsheet 30 (column 3, lines 59-68) wherein the topsheet is directly joined to the periphery of backsheet 30 by flap attachment means such as is known in the art such as adhesive (column 6, lines 45-66), back waist region 48 fastener 62 on inner surface connects to front waist region 50 outer surface fastener 66 (column 7, lines 20-38, figure 1). One would be motivated to modify the article of Mishima with perimeter adhesive means as is well known in the art for improved adhering since the references disclose disposable diapers having fastening configurations to the inner and outer surfaces as claimed. Therefore it would be obvious to modify the article, thus providing a perimeter adhesive of top to backsheet.

Further, Mishima/Scripps do not expressly disclose the opening length percentage, perimeter bonding percentage, crotch-to-fastener angle, front center panel length. Length, perimeter bonding percentages, and angles are result effective variables since they are a result of the overall article size and dependent on the component sizes that make up the article. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mishima/Scripps with the

aforementioned values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claims 3 and 24 Scripps further discloses an extensible backsheet 30 (column 5, lines 53-66).

Regarding claim 43 in addition to the article discussed above with respect to claims 1 and 22, Scripps further discloses back ear portions/tape tab 60 bonded to each longitudinal side edge in the back waist region 48 (column 8, lines 39-49, figure 1) and front ear/ panel 51 bonded in the front waist region 50 (column 4, lines 41-49, figure 1).

Regarding claims 45 and 47 see the discussion above with respect to claims 43 and 3.

2. Claims 4, 6, 11, 15-16, 18, 25, 27, 32, 36-37, 48, 53, and 57-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mishima et al. (US 2002/0072726) in view of Scripps (US 4,869,724) as applied to claim 1, further in view of Freeland (US 4,990,147). Mishima/Scripps do not expressly disclose elastic and permeable outer layer, outer layer length and width greater than inner layer length and width, or outer layer retraction less than inner layer retraction. Freeland discloses disposable diaper 10 (column 2, lines 36-37) comprising a flexible urine impervious back sheet 14 (column 2, lines 53-54), nonabsorbent elastic liner 12 that enhances the conformability and liner shaping to the wearer (column 4, lines 4-6). Freeland further discloses urine pervious nonabsorbent elastic liner 12 that is soft and non-irritating to the skin (column 3, lines 47-49); an elastic inner layer 12 may include a portion or zone that is urine impervious

(column 3, lines 54-55). One would be motivated to modify the article of Mishima/Scripps with the nonabsorbent liner and dimensions of Freeland for improved article performance since the references disclose disposable absorbent personal hygiene articles. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the article thus providing nonabsorbent liner, outer and inner layer lengths and widths and retraction relationships.

3. Claims 12, 33, 54, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mishima et al. (US 2002/0072726), Scripps (US 4,869,724), Freeland (US 4,990,147), and further in view of Wilson et al. (US 4,895,569).

Regarding claims 12, 33 and 54 Mishima/Freeland/Scripps do not expressly disclose the elastic inner liner comprises multiple layers. Wilson further discloses inner layer 32 comprises an absorbent assembly with two or more layers of materials including top sheet 34, absorbent core 38 and barrier layer 36 (column 4, lines 39-44 and figure 4). One would be motivated to modify the inner body side liner of Mishima/Freeland/Scripps with the multiple layered inner liner of Wilson for enhanced article performance since the references disclose disposable absorbent personal wearing articles. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the article, thus providing a multi-layered inner layer.

Regarding claim 64 Mishima/Freeland/Scripps disclose the article having adhesive perimeter bonds as discussed above with respect to claims 1, 22 and 43 (see Scripps, column 6, lines 45-66). Mishima/Freeland/Scripps do not expressly disclose

perimeter bonding via ultrasonic bonds. Wilson discloses a disposable absorbent diaper garment 10 (column 3, lines 47-50) comprising an outer cover 12 which is liquid-impervious plastic film which may or may not be resiliently stretchable (column 4, lines 34-36) and elastic (column 9, lines 55-67); an absorbent structure/inner layer 32 (column 4, lines 44-47) having a perimeter bonded to the outer layer 12 via ultrasonic autogeneous bonds 68 (column 8, lines 62-column 9, line 2 and figure 2); and wherein the outer surface of the outer layer 12 includes a fastener 42, 44 in the front waist region located laterally inward of each longitudinal side edge (column 5, lines 4-10 and figure 2), the fasteners 42,44 adapted to engage into the inner layer 32 when placed about the wearer (figures 2 and 5) and back waist region fasteners 46,48 located laterally inward of each longitudinal side edge (figure 2), the back waist region fasteners 46,48 adapted to engage into the outer surface of the outer layer in the front waist region (figure 1). One would be motivated to modify the article of Mishima/Freeland/Scripps with the ultrasonic layer perimeter bonds of Wilson since the references disclose any type of attachment means may be used to bond the layers together and since the references disclose disposable absorbent personal care articles with fasteners. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the article, thus providing perimeter bonding via ultrasonic bonds.

4. Claims 7, 28 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mishima et al. (US 2002/0072726) in view of Scripps (US 4,869,724) as applied to claims 1 and 22 and 43, and further in view of Clear et al. (US 5,690,627; herein

'Clear'). Mishima/Scripps do not expressly disclose the outer cover having one or more pleats. **Clear** discloses disposable absorbent diaper 20 comprising fastening system 36 disposed laterally inward from the longitudinal side edge (column 4, lines 24-31 and figure 1) comprising flexible impervious back sheet/outer layer 26, 226 (column 6, lines 57-62), zero strain stretch laminate top sheet/inner layer 24 (column 8, lines 14-17), and pleats 380 on the outer cover 226 for improved fit (column 16, lines 14-17). One would be motivated to modify the outer cover of Mishima/Scripps with the pleated outer cover of **Clear** for improved fit and article stretchability since the references disclose disposable absorbent wearing articles with flexible outer and inner layers. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the outer layer, thus providing pleats in the outer layer.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

